

**Representative Wayne A. Harper** proposes the following substitute bill:

**CHILD WELFARE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends Title 62A, Utah Human Services Code, Title 78A, Judiciary and Judicial Administration, and Title 78B, Judicial Code, relating to child welfare.

**Highlighted Provisions:**

This bill:

- ▶ defines the term "relative";
- ▶ amends Division of Child and Family Services caseworker training requirements;
- ▶ requires a caseworker to file a report explaining why a particular placement is in the child's best interest when a child is removed from the child's immediate family but not placed with kin;
- ▶ requires a licensee under the Medical Practice or Nurse Practice Act to report a determination of fetal alcohol spectrum disorder to the Division of Child and Family Services;
- ▶ prohibits taking a child into protective custody solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school;
- ▶ requires a fingerprint-based background check on any adult residing in the home of a foster parent or potential foster parent;
- ▶ creates a presumption that reunification services not be provided to:



- 26           • a parent who commits sexual abuse of a child;
- 27           • a parent who is a registered sex offender; or
- 28           • a birth mother whose child is born with fetal alcohol spectrum disorder, unless
- 29 she enrolls in a substance abuse program;
- 30           ▶ requires a court to consider costs already borne by a parent or legal guardian before
- 31 assessing guardian ad litem attorney fees, court costs, or expenses against a parent
- 32 or legal guardian;
- 33           ▶ permits a parent or legal guardian to appeal a court's determination of guardian ad
- 34 litem attorney fees, costs, and expenses;
- 35           ▶ requires a guardian ad litem to:
- 36           • disclose, in certain cases, the minor's wishes to the court;
- 37           • conduct an independent investigation regarding a minor client, the minor's
- 38 family, and what constitutes the best interest of the minor;
- 39           • keep records regarding how many times the guardian ad litem has had contact
- 40 with each minor client and make those records available when making a
- 41 recommendation regarding the client's welfare; and
- 42           • disclose to the court the basis for any recommendation regarding the best
- 43 interest of the child;
- 44           ▶ creates a preference for the adoption of a child by a relative following a termination
- 45 of parental rights; and
- 46           ▶ makes technical changes.

47 **Money Appropriated in this Bill:**

48           None

49 **Other Special Clauses:**

50           None

51 **Utah Code Sections Affected:**

52 AMENDS:

53           **62A-2-120**, as last amended by Laws of Utah 2011, Chapters 320 and 366

54           **62A-4a-102**, as last amended by Laws of Utah 2009, Chapter 75

55           **62A-4a-107**, as last amended by Laws of Utah 2007, Chapter 306

56           **62A-4a-202.1**, as last amended by Laws of Utah 2008, Chapters 3 and 17

- 57           **62A-4a-202.6**, as last amended by Laws of Utah 2010, Chapter 239
- 58           **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17
- 59           **62A-4a-404**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 60           **78A-6-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 61           **78A-6-306**, as last amended by Laws of Utah 2010, Chapter 368
- 62           **78A-6-308**, as last amended by Laws of Utah 2009, Chapter 32
- 63           **78A-6-312**, as last amended by Laws of Utah 2011, Chapters 98 and 167
- 64           **78A-6-511**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 65           **78A-6-902**, as last amended by Laws of Utah 2011, Chapter 158
- 66           **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of
- 67 Utah 2008, Chapter 17



68  
69 *Be it enacted by the Legislature of the state of Utah:*

70           Section 1. Section **62A-2-120** is amended to read:

71           **62A-2-120. Criminal background checks -- Direct access to children or**  
 72 **vulnerable adults.**

73           (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a  
 74 license renewal under this chapter shall submit to the office the names and other identifying  
 75 information, which may include fingerprints, of all persons associated with the licensee, as  
 76 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

77           (b) The Criminal Investigations and Technical Services Division of the Department of  
 78 Public Safety, or the office as authorized under Section 53-10-108, shall process the  
 79 information described in Subsection (1)(a) to determine whether the [~~individual~~] applicant has  
 80 been convicted of any crime.

81           (c) Except as provided in Subsection (1)(d), if an [~~individual~~] applicant has not  
 82 continuously lived in Utah for the five years immediately preceding the day on which the  
 83 information referred to in Subsection (1)(a) is submitted to the office, the [~~individual~~] applicant  
 84 shall submit fingerprints for a FBI national criminal history record check. The fingerprints  
 85 shall be submitted to the FBI through the Criminal Investigations and Technical Services  
 86 Division.

87           (d) An [~~individual~~] applicant is not required to comply with Subsection (1)(c) if:

88 (i) the ~~[individual]~~ applicant continuously lived in Utah for the five years immediately  
89 preceding the day on which the information described in Subsection (1)(a) is submitted to the  
90 office, except for time spent outside of the United States and its territories; and

91 (ii) the background check of the ~~[individual]~~ applicant is being conducted for a purpose  
92 other than a purpose described in Subsection (1)(f).

93 (e) If an applicant described in Subsection (1)(a) spent time outside of the United  
94 States and its territories during the five years immediately preceding the day on which the  
95 information described in Subsection (1)(a) is submitted to the office, the office shall require the  
96 applicant to submit documentation establishing whether the applicant was convicted of a crime  
97 during the time that the applicant spent outside of the United States and its territories.

98 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in  
99 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an  
100 FBI national criminal history records check, through the Criminal Investigations and Technical  
101 Services Division, if the background check of the applicant is being conducted for the purpose  
102 of:

103 (i) licensing a prospective foster home; or

104 (ii) approving a prospective adoptive placement of a child in state custody.

105 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of  
106 this section, if the background check of an applicant described in Subsection (1)(a) is being  
107 conducted for the purpose of licensing a prospective foster home or approving a prospective  
108 adoptive placement of a child in state custody, the office shall:

109 (i) check the child abuse and neglect registry in each state where each ~~[prospective~~  
110 ~~foster parent or prospective adoptive parent]~~ applicant resided in the five years immediately  
111 preceding the day on which the ~~[prospective foster parent or prospective adoptive parent]~~  
112 applicant applied to be a foster parent or adoptive parent, to determine whether the prospective  
113 foster parent or prospective adoptive parent is listed in the registry as having a substantiated or  
114 supported finding of child abuse or neglect; and

115 (ii) check the child abuse and neglect registry in each state where each adult living in  
116 the home of the ~~[prospective foster parent or prospective adoptive parent]~~ applicant described  
117 in Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the  
118 ~~[prospective foster parent or prospective adoptive parent]~~ applicant applied to be a foster parent

119 or adoptive parent, to determine whether the adult is listed in the registry as having a  
120 substantiated or supported finding of child abuse or neglect.

121 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

122 (i) federal law or rule permits otherwise; or

123 (ii) the requirements would prohibit the Division of Child and Family Services or a  
124 court from placing a child with:

125 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

126 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,  
127 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)  
128 and (g).

129 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah  
130 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to  
131 background checks.

132 (2) The office shall approve [~~a person~~] an applicant for whom identifying information  
133 is submitted under Subsection (1) to have direct access to children or vulnerable adults in the  
134 licensee program if:

135 (a) (i) the [~~person~~] applicant is found to have no criminal history record; or

136 (ii) (A) the only convictions in the [~~person's~~] applicant's criminal history record are  
137 misdemeanors or infractions not involving any of the offenses described in Subsection (3); and

138 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years  
139 before the date of the search;

140 (b) the [~~person~~] applicant is not listed in the statewide database of the Division of  
141 Aging and Adult Services created by Section 62A-3-311.1;

142 (c) juvenile court records do not show that a court made a substantiated finding, under  
143 Section 78A-6-323, that the [~~person~~] applicant committed a severe type of child abuse or  
144 neglect;

145 (d) the [~~person~~] applicant is not listed in the Licensing Information System of the  
146 Division of Child and Family Services created by Section 62A-4a-1006;

147 (e) the [~~person~~] applicant has not pled guilty or no contest to a pending charge for any:

148 (i) felony;

149 (ii) misdemeanor listed in Subsection (3); or

150 (iii) infraction listed in Subsection (3); and

151 (f) for ~~[a person]~~ an applicant described in Subsection (1)(g), the registry check  
152 described in Subsection (1)(g) does not indicate that the ~~[person]~~ applicant is listed in a child  
153 abuse and neglect registry of another state as having a substantiated or supported finding of a  
154 severe type of child abuse or neglect as defined in Section 62A-4a-1002.

155 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the  
156 date of conviction, the office may not approve ~~[a person]~~ an applicant to have direct access to  
157 children or vulnerable adults in the licensee's human services program if ~~[that person]~~ the  
158 applicant has been convicted of an offense, whether a felony, misdemeanor, or infraction, that  
159 is:

160 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

161 (b) a violation of any pornography law, including sexual exploitation of a minor;

162 (c) prostitution;

163 (d) included in:

164 (i) Title 76, Chapter 5, Offenses Against the Person;

165 (ii) Section 76-5b-201, Sexual Exploitation of a Minor; or

166 (iii) Title 76, Chapter 7, Offenses Against the Family;

167 (e) a violation of Section 76-6-103, aggravated arson;

168 (f) a violation of Section 76-6-203, aggravated burglary;

169 (g) a violation of Section 76-6-302, aggravated robbery; or

170 (h) a conviction for an offense committed outside of the state that, if committed in the  
171 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

172 (4) (a) Except as provided in Subsection (8), if ~~[a person]~~ an applicant for whom  
173 identifying information is submitted under Subsection (1) is not approved by the office under  
174 Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee  
175 program, the office shall conduct a comprehensive review of criminal and court records and  
176 related circumstances if the reason the approval is not granted is due solely to one or more of  
177 the following:

178 (i) a conviction for:

179 (A) any felony not listed in Subsection (3);

180 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the

- 181 date of the search;
- 182 (C) a protective order or ex parte protective order violation under Section 76-5-108 or  
183 a similar statute in another state; or
- 184 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years  
185 have passed since the date of conviction;
- 186 (ii) a plea of guilty or no contest to a pending:
- 187 (A) felony;
- 188 (B) misdemeanor listed in Subsection (3); or
- 189 (C) infraction listed in Subsection (3);
- 190 (iii) the [person] applicant is listed in the statewide database of the Division of Aging  
191 and Adult Services created by Section 62A-3-311.1;
- 192 (iv) juvenile court records show that a court made a substantiated finding, under  
193 Section 78A-6-323, that the [person] applicant committed a severe type of child abuse or  
194 neglect;
- 195 (v) the [person] applicant is listed in the Licensing Information System of the Division  
196 of Child and Family Services created by Section 62A-4a-1006; or
- 197 (vi) the [person] applicant is listed in a child abuse or neglect registry of another state  
198 as having a substantiated or supported finding of a severe type of child abuse or neglect as  
199 defined in Section 62A-4a-1002.
- 200 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
- 201 (i) the date of the offense or incident;
- 202 (ii) the nature and seriousness of the offense or incident;
- 203 (iii) the circumstances under which the offense or incident occurred;
- 204 (iv) the age of the perpetrator when the offense or incident occurred;
- 205 (v) whether the offense or incident was an isolated or repeated incident;
- 206 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable  
207 adult, including:
- 208 (A) actual or threatened, nonaccidental physical or mental harm;
- 209 (B) sexual abuse;
- 210 (C) sexual exploitation; and
- 211 (D) negligent treatment;

212 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric  
213 treatment received, or additional academic or vocational schooling completed, by the person;  
214 and

215 (viii) any other pertinent information.

216 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office  
217 shall approve the [person] applicant who is the subject of the review to have direct access to  
218 children or vulnerable adults, unless it finds that approval will likely create a risk of harm to a  
219 child or vulnerable adult.

220 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
221 office may make rules, consistent with this chapter, defining procedures for the comprehensive  
222 review described in this Subsection (4).

223 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person  
224 being supervised is under the uninterrupted visual and auditory surveillance of the person doing  
225 the supervising.

226 (b) A licensee may not permit any person to have direct access to a child or a  
227 vulnerable adult unless, subject to Subsection (5)(c), that person is:

228 (i) associated with the licensee and:

229 (A) approved by the office to have direct access to children or vulnerable adults under  
230 this section; or

231 (B) (I) the office has not determined whether to approve that person to have direct  
232 access to children or vulnerable adults;

233 (II) the information described in Subsection (1)(a), relating to that person, is submitted  
234 to the department; and

235 (III) that person is directly supervised by a person associated with the licensee who is  
236 approved by the office to have direct access to children or vulnerable adults under this section;

237 (ii) (A) not associated with the licensee; and

238 (B) directly supervised by a person associated with the licensee who is approved by the  
239 office to have direct access to children or vulnerable adults under this section;

240 (iii) the parent or guardian of the child or vulnerable adult; or

241 (iv) a person approved by the parent or guardian of the child or vulnerable adult to  
242 have direct access to the child or vulnerable adult.



243 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child  
244 or a vulnerable adult if that person is prohibited by court order from having that access.

245 (6) (a) Within 30 days after receiving the identifying information for a person under  
246 Subsection (1), the office shall give written notice to the person and to the licensee or applicant  
247 with whom the person is associated of:

248 (i) the office's decision regarding its background screening clearance and findings; and

249 (ii) a list of any convictions found in the search.

250 (b) With the notice described in Subsection (6)(a), the office shall also give [~~to~~] the  
251 [~~person~~] applicant the details of any comprehensive review conducted under Subsection (4).

252 (c) If the notice under Subsection (6)(a) states that the [~~person~~] applicant is not  
253 approved to have direct access to children or vulnerable adults, the notice shall further advise  
254 the persons to whom the notice is given that either the person or the licensee or applicant with  
255 whom the person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing  
256 in the department's Office of Administrative Hearings, to challenge the office's decision.

257 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
258 office shall make rules, consistent with this chapter:

259 (i) defining procedures for the challenge of its background screening decision  
260 described in this Subsection (6); and

261 (ii) expediting the process for renewal of a license under the requirements of this  
262 section and other applicable sections.

263 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for  
264 an initial license, or license renewal, to operate a substance abuse program that provides  
265 services to adults only.

266 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or  
267 license a person as a prospective foster parent or a prospective adoptive parent if the person has  
268 been convicted of:

269 (i) a felony involving conduct that constitutes any of the following:

270 (A) child abuse, as described in Section 76-5-109;

271 (B) commission of domestic violence in the presence of a child, as described in Section  
272 76-5-109.1;

273 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

- 274 (D) endangerment of a child, as described in Section 76-5-112.5;
- 275 (E) aggravated murder, as described in Section 76-5-202;
- 276 (F) murder, as described in Section 76-5-203;
- 277 (G) manslaughter, as described in Section 76-5-205;
- 278 (H) child abuse homicide, as described in Section 76-5-208;
- 279 (I) homicide by assault, as described in Section 76-5-209;
- 280 (J) kidnapping, as described in Section 76-5-301;
- 281 (K) child kidnapping, as described in Section 76-5-301.1;
- 282 (L) aggravated kidnapping, as described in Section 76-5-302;
- 283 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 284 (N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;
- 285 (O) aggravated arson, as described in Section 76-6-103;
- 286 (P) aggravated burglary, as described in Section 76-6-203;
- 287 (Q) aggravated robbery, as described in Section 76-6-302; or
- 288 (R) domestic violence, as described in Section 77-36-1; or
- 289 (ii) an offense committed outside the state that, if committed in the state, would
- 290 constitute a violation of an offense described in Subsection (8)(a)(i).
- 291 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
- 292 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
- 293 immediately preceding the day on which the person would otherwise be approved or licensed,
- 294 the person has been convicted of a felony involving conduct that constitutes any of the
- 295 following:
- 296 (i) aggravated assault, as described in Section 76-5-103;
- 297 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 298 (iii) mayhem, as described in Section 76-5-105;
- 299 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 300 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 301 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 302 Act;
- 303 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 304 Precursor Act; or

305 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

306 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,  
307 the conflicting provision of Section 62A-2-120.5 shall govern.

308 Section 2. Section **62A-4a-102** is amended to read:

309 **62A-4a-102. Policy responsibilities of division.**

310 (1) The Division of Child and Family Services, created in Section 62A-4a-103, is  
311 responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah  
312 Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title  
313 78A, Chapter 6, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency  
314 proceedings, and domestic violence services. The division is responsible to see that the  
315 legislative purposes for the division are carried out.

316 (2) The division shall:

317 (a) approve fee schedules for programs within the division;

318 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
319 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private  
320 contract providers, allied state and local agencies, and others are provided with an opportunity  
321 to comment and provide input regarding any new policy or proposed revision of an existing  
322 policy; and

323 (c) provide a mechanism for:

324 (i) systematic and regular review of existing ~~[policy]~~ policies, including an annual  
325 review of all division policies to ensure that policies comply with the Utah Code; and

326 (ii) consideration of policy changes proposed by the persons and agencies described in  
327 Subsection (2)(b).

328 (3) (a) The division shall establish rules for the determination of eligibility for services  
329 offered by the division in accordance with this chapter.

330 (b) The division may, by rule, establish eligibility standards for consumers.

331 (4) The division shall adopt and maintain rules regarding placement for adoption or  
332 foster care that are consistent with, and no more restrictive than, applicable statutory  
333 provisions.

334 Section 3. Section **62A-4a-107** is amended to read:

335 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**

336 **curriculum.**

337 (1) There is created within the division a full-time position of Child Welfare Training  
338 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee  
339 in that position is not responsible for direct casework services or the supervision of those  
340 services, but is required to:

341 (a) develop child welfare curriculum that:

342 (i) is current and effective, consistent with the division's mission and purpose for child  
343 welfare; and

344 (ii) utilizes curriculum and resources from a variety of sources including those from:

345 (A) the public sector;

346 (B) the private sector; and

347 (C) inside and outside of the state;

348 (b) recruit, select, and supervise child welfare trainers;

349 (c) develop a statewide training program, including a budget and identification of  
350 sources of funding to support that training;

351 (d) evaluate the efficacy of training in improving job performance;

352 (e) assist child protective services and foster care workers in developing and fulfilling  
353 their individual training plans;

354 (f) monitor staff compliance with division training requirements and individual training  
355 plans; and

356 (g) expand the collaboration between the division and schools of social work within  
357 institutions of higher education in developing child welfare services curriculum, and in  
358 providing and evaluating training.

359 (2) (a) The director shall, with the assistance of the child welfare training coordinator,  
360 establish a core curriculum for child welfare services that is substantially equivalent to the  
361 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

362 (b) Any child welfare caseworker who is employed by the division for the first time  
363 after July 1, 1999, shall, before assuming significant independent casework responsibilities,  
364 successfully complete:

365 (i) the core curriculum; and

366 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of

367 observing and accompanying at least two capable and experienced child welfare caseworkers  
368 as they perform work-related functions:

369 (A) for three months if the caseworker has less than six months of on-the-job  
370 experience as a child welfare caseworker; or

371 (B) for two months if the caseworker has six months or more but less than 24 months  
372 of on-the-job experience as a child welfare caseworker.

373 (c) A child welfare caseworker with at least 24 months of on-the-job experience is not  
374 required to receive on-the-job training under Subsection (2)(b)(ii).

375 (3) Child welfare caseworkers shall complete training in:

376 (a) the legal duties of a child welfare caseworker;

377 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights  
378 of children, parents, and families at all stages of a case, including:

379 (i) initial contact;

380 (ii) investigation; and

381 (iii) treatment;

382 (c) recognizing situations involving:

383 (i) substance abuse;

384 (ii) domestic violence;

385 (iii) abuse; and

386 (iv) neglect; and

387 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of  
388 the United States to the child welfare caseworker's job, including:

389 (i) search and seizure of evidence;

390 (ii) the warrant requirement;

391 (iii) exceptions to the warrant requirement; and

392 (iv) removing a child from the custody of the child's parent or guardian.

393 (4) The division shall train its child welfare caseworkers to apply the risk assessment  
394 tools and rules described in Subsection 62A-4a-1002(2).

395 (5) The division shall use the training of child welfare caseworkers to emphasize:

396 (a) the importance of maintaining the parent-child relationship whenever possible;

397 (b) the preference for providing in-home services over taking a child into protective

398 custody, both for the emotional well-being of the child and the efficient allocation of resources;  
399 and

400 (c) the importance and priority of kinship placement in the event a child must be taken  
401 into protective custody.

402 [~~5~~] (6) When a child welfare caseworker is hired, before assuming significant  
403 independent casework responsibilities, the child welfare caseworker shall complete the training  
404 described in Subsections (3) [~~and (4)~~] through (5).

405 Section 4. Section **62A-4a-202.1** is amended to read:

406 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**  
407 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or**  
408 **emergency placement.**

409 (1) A peace officer or child welfare worker may not:

410 (a) enter the home of a child who is not under the jurisdiction of the court, remove a  
411 child from the child's home or school, or take a child into protective custody unless authorized  
412 under Subsection 78A-6-106(2) [~~;~~]; or

413 (b) remove a child from the child's home or take a child into custody under this section  
414 solely on the basis of educational neglect, truancy, or failure to comply with a court order to  
415 attend school.

416 (2) A child welfare worker within the division may take action under Subsection (1)  
417 accompanied by a peace officer, or without a peace officer when a peace officer is not  
418 reasonably available.

419 (3) (a) If possible, consistent with the child's safety and welfare, before taking a child  
420 into protective custody, the child welfare worker shall also determine whether there are  
421 services available that, if provided to a parent or guardian of the child, would eliminate the  
422 need to remove the child from the custody of the child's parent or guardian.

423 (b) If the services described in Subsection (3)(a) are reasonably available, they shall be  
424 utilized.

425 (c) In determining whether the services described in Subsection (3)(a) are reasonably  
426 available, and in making reasonable efforts to provide those services, the child's health, safety,  
427 and welfare shall be the child welfare worker's paramount concern.

428 (4) (a) A child removed or taken into custody under this section may not be placed or

429 kept in a secure detention facility pending court proceedings unless the child is detainable  
430 based on guidelines promulgated by the Division of Juvenile Justice Services.

431 (b) A child removed from the custody of the child's parent or guardian but who does  
432 not require physical restriction shall be given temporary care in:

433 (i) a shelter facility; or

434 (ii) an emergency placement in accordance with Section 62A-4a-209.

435 (c) When making a placement under Subsection (4)(b), the Division of Child and  
436 Family Services shall give priority to a placement with a noncustodial parent, relative, or  
437 friend, in accordance with Section 62A-4a-209.

438 (d) If the child is not placed with a noncustodial parent, a relative, or a designated  
439 friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor  
440 explaining why a different placement was in the child's best interest.

441 Section 5. Section **62A-4a-202.6** is amended to read:

442 **62A-4a-202.6. Conflict child protective services investigations -- Authority of**  
443 **investigators.**

444 (1) (a) The division shall contract with an independent child protective service  
445 investigator from the private sector to investigate reports of abuse or neglect of a child that  
446 occur while the child is in the custody of the division.

447 (b) The executive director shall designate an entity within the department, other than  
448 the division, to monitor the contract for the investigators described in Subsection (1)(a).

449 (c) [~~When~~] Subject to Subsection (4), when a report is made that a child is abused or  
450 neglected while in the custody of the division:

451 (i) the attorney general may, in accordance with Section 67-5-16, and with the consent  
452 of the division, employ a child protective services investigator to conduct a conflict  
453 investigation of the report; or

454 (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent  
455 of the division, conduct a conflict investigation of the report.

456 (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the  
457 consent of the division, conducting a criminal investigation of abuse or neglect under Title 53,  
458 Public Safety Code.

459 (2) The investigators described in Subsections (1)(c) and (d) may also investigate

460 allegations of abuse or neglect of a child by a department employee or a licensed substitute care  
461 provider.

462 (3) The investigators described in Subsection (1), if not peace officers, shall have the  
463 same rights, duties, and authority of a child protective services investigator employed by the  
464 division to:

465 (a) make a thorough investigation upon receiving either an oral or written report of  
466 alleged abuse or neglect of a child, with the primary purpose of that investigation being the  
467 protection of the child;

468 (b) make an inquiry into the child's home environment, emotional, or mental health, the  
469 nature and extent of the child's injuries, and the child's physical safety;

470 (c) make a written report of their investigation, including determination regarding  
471 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and  
472 forward a copy of that report to the division within the time mandates for investigations  
473 established by the division; and

474 (d) immediately consult with school authorities to verify the child's status in  
475 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or  
476 includes an allegation of educational neglect.

477 (4) If there is a lapse in the contract with a private child protective service investigator  
478 and no other investigator is available under Subsection (1)(a) or (c), the department may  
479 conduct an independent investigation.

480 Section 6. Section **62A-4a-209** is amended to read:

481 **62A-4a-209. Emergency placement.**

482 (1) As used in this section:

483 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

484 (b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

485 (2) The division may use an emergency placement under Subsection

486 62A-4a-202.1(4)(b)(ii) when:

487 (a) the case worker has made the determination that:

488 (i) the child's home is unsafe;

489 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

490 (iii) the child's custodial parent or guardian will agree to not remove the child from the



491 home of the person that serves as the placement and not have any contact with the child until  
492 after the shelter hearing required by Section 78A-6-306;

493 (b) a person, with preference being given in accordance with Subsection (4), can be  
494 identified who has the ability and is willing to provide care for the child who would otherwise  
495 be placed in shelter care, including:

496 (i) taking the child to medical, mental health, dental, and educational appointments at  
497 the request of the division; and

498 (ii) making the child available to division services and the guardian ad litem; and

499 (c) the person described in Subsection (2)(b) agrees to care for the child on an  
500 emergency basis under the following conditions:

501 (i) the person meets the criteria for an emergency placement under Subsection (3);

502 (ii) the person agrees to not allow the custodial parent or guardian to have any contact  
503 with the child until after the shelter hearing unless authorized by the division in writing;

504 (iii) the person agrees to contact law enforcement and the division if the custodial  
505 parent or guardian attempts to make unauthorized contact with the child;

506 (iv) the person agrees to allow the division and the child's guardian ad litem to have  
507 access to the child;

508 (v) the person has been informed and understands that the division may continue to  
509 search for other possible placements for long-term care, if needed;

510 (vi) the person is willing to assist the custodial parent or guardian in reunification  
511 efforts at the request of the division, and to follow all court orders; and

512 (vii) the child is comfortable with the person.

513 (3) Except as otherwise provided in Subsection (5), before the division places a child  
514 in an emergency placement, the division:

515 (a) may request the name of a reference and may contact the reference to determine the  
516 answer to the following questions:

517 (i) would the person identified as a reference place a child in the home of the  
518 emergency placement; and

519 (ii) are there any other relatives or friends to consider as a possible emergency or  
520 long-term placement for the child;

521 (b) shall have the custodial parent or guardian sign an emergency placement agreement

522 form during the investigation;

523 (c) (i) if the emergency placement will be with a relative of the child, shall comply with  
524 the background check provisions described in Subsection (7); or

525 (ii) if the emergency placement will be with a person other than a noncustodial parent  
526 or a relative, shall comply with the criminal background check provisions described in Section  
527 78A-6-308 for adults living in the household where the child will be placed;

528 (d) shall complete a limited home inspection of the home where the emergency  
529 placement is made; and

530 (e) shall have the emergency placement approved by a family service specialist.

531 (4) (a) The following order of preference shall be applied when determining the person  
532 with whom a child will be placed in an emergency placement described in this section,  
533 provided that the person is willing, and has the ability, to care for the child:

534 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;

535 (ii) a relative of the child;

536 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or  
537 guardian of the child, if the friend is a licensed foster parent; and

538 (iv) a shelter facility, former foster placement, or other foster placement designated by  
539 the division.

540 (b) Unless the division agrees otherwise, the custodial parent or guardian described in  
541 Subsection (4)(a)(iii) may only designate one friend as a potential emergency placement.

542 (c) Before placing the child with a shelter facility, former foster placement, or other  
543 foster placement under Subsection (4)(a)(iv), the caseworker assigned to the child shall submit  
544 a report to the division:

545 (i) explaining why placement with a noncustodial parent, family member, or friend  
546 designated under Subsection (4)(a)(iii) is not possible; and

547 (ii) that shall be made available upon request to the child's parent or family member.

548 (5) (a) The division may, pending the outcome of the investigation described in  
549 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial  
550 parent if, based on a limited investigation, prior to making the emergency placement, the  
551 division:

552 (i) determines that the noncustodial parent has regular, unsupervised visitation with the

553 child that is not prohibited by law or court order;

554 (ii) determines that there is not reason to believe that the child's health or safety will be  
555 endangered during the emergency placement; and

556 (iii) has the custodial parent or guardian sign an emergency placement agreement.

557 (b) Either before or after making an emergency placement with the noncustodial parent  
558 of the child, the division may conduct the investigation described in Subsection (3)(a) in  
559 relation to the noncustodial parent.

560 (c) Before, or within one day, excluding weekends and holidays, after a child is placed  
561 in an emergency placement with the noncustodial parent of the child, the division shall conduct  
562 a limited:

563 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

564 (ii) inspection of the home where the emergency placement is made.

565 (6) After an emergency placement, the division caseworker must:

566 (a) respond to the emergency placement's calls within one hour if the custodial parents  
567 or guardians attempt to make unauthorized contact with the child or attempt to remove the  
568 child;

569 (b) complete all removal paperwork, including the notice provided to the custodial  
570 parents and guardians under Section 78A-6-306;

571 (c) contact the attorney general to schedule a shelter hearing;

572 (d) complete the placement procedures required in Section 78A-6-307; and

573 (e) continue to search for other relatives as a possible long-term placement, if needed.

574 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

575 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification  
576 background check; and

577 (ii) a completed search of the Management Information System described in Section  
578 62A-4a-1003.

579 (b) The division shall determine whether a person passes the background check  
580 described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),  
581 and (8).

582 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an  
583 individual who is prohibited by court order from having access to that child.

584 Section 7. Section **62A-4a-404** is amended to read:

585 **62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting**  
586 **requirements.**

587 When [~~any person~~] an individual, including a licensee under the Medical Practice Act  
588 or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that  
589 the child, at the time of birth, has fetal alcohol syndrome [~~or~~], fetal alcohol spectrum disorder,  
590 or fetal drug dependency, [~~he~~] the individual shall report that determination to the division as  
591 soon as possible.

592 Section 8. Section **78A-6-302** is amended to read:

593 **78A-6-302. Court-ordered protective custody of a child following petition filing --**  
594 **Grounds.**

595 (1) After a petition has been filed under Section 78A-6-304, if the child who is the  
596 subject of the petition is not in the protective custody of the division, a court may order that the  
597 child be removed from the child's home or otherwise taken into protective custody if the court  
598 finds, by a preponderance of the evidence, that any one or more of the following circumstances  
599 exist:

600 (a) (i) there is an imminent danger to the physical health or safety of the child; and

601 (ii) the child's physical health or safety may not be protected without removing the  
602 child from the custody of the child's parent or guardian;

603 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct  
604 that causes the child to suffer emotional damage; and

605 (ii) there are no reasonable means available by which the child's emotional health may  
606 be protected without removing the child from the custody of the child's parent or guardian;

607 (c) the child or another child residing in the same household has been, or is considered  
608 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a  
609 parent or guardian, a member of the parent's or guardian's household, or other person known to  
610 the parent or guardian;

611 (d) the parent or guardian is unwilling to have physical custody of the child;

612 (e) the child is abandoned or left without any provision for the child's support;

613 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged  
614 or cannot arrange for safe and appropriate care for the child;

- 615 (g) (i) a relative or other adult custodian with whom the child is left by the parent or  
616 guardian is unwilling or unable to provide care or support for the child;
- 617 (ii) the whereabouts of the parent or guardian are unknown; and  
618 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- 619 (h) the child is in immediate need of medical care;
- 620 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an  
621 environment that poses a threat to the child's health or safety; or  
622 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose  
623 a threat to the child's health or safety;
- 624 (j) the child or another child residing in the same household has been neglected;
- 625 (k) an infant has been abandoned, as defined in Section 78A-6-316;
- 626 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or  
627 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;  
628 and  
629 (ii) any clandestine laboratory operation was located in the residence or on the property  
630 where the child resided; or  
631 (m) the child's welfare is otherwise endangered.
- 632 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as  
633 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency  
634 occurs involving the same substantiated abuser or under similar circumstance as the previous  
635 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the  
636 custody of the child's parent.
- 637 (b) For purposes of Subsection (1)(c):  
638 (i) another child residing in the same household may not be removed from the home  
639 unless that child is considered to be at substantial risk of being physically abused, sexually  
640 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and  
641 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,  
642 or sexual exploitation by a person known to the parent has occurred, and there is evidence that  
643 the parent or guardian failed to protect the child, after having received the notice, by allowing  
644 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie  
645 evidence that the child is at substantial risk of being physically abused, sexually abused, or

646 sexually exploited.

647 (3) In the absence of one of the factors described in Subsection (1), a court may not  
648 remove a child from the parent's or guardian's custody on the basis of:

649 (a) educational neglect, truancy, or failure to comply with a court order to attend  
650 school;

651 (b) mental illness or poverty of the parent or guardian; or

652 (c) disability of the parent or guardian, as defined in Section 57-21-2.

653 (4) A child removed from the custody of the child's parent or guardian under this  
654 section may not be placed or kept in a secure detention facility pending further court  
655 proceedings unless the child is detainable based on guidelines promulgated by the Division of  
656 Juvenile Justice Services.

657 (5) This section does not preclude removal of a child from the child's home without a  
658 warrant or court order under Section 62A-4a-202.1.

659 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and  
660 Family Services may not remove a child from the custody of the child's parent or guardian on  
661 the sole or primary basis that the parent or guardian refuses to consent to:

662 (i) the administration of a psychotropic medication to a child;

663 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

664 (iii) a psychiatric or behavioral health evaluation of a child.

665 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family  
666 Services may remove a child under conditions that would otherwise be prohibited under  
667 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a  
668 serious, imminent risk to the child's physical safety or the physical safety of others.

669 Section 9. Section **78A-6-306** is amended to read:

670 **78A-6-306. Shelter hearing.**

671 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays  
672 after any one or all of the following occur:

673 (a) removal of the child from the child's home by the division;

674 (b) placement of the child in the protective custody of the division;

675 (c) emergency placement under Subsection 62A-4a-202.1(4);

676 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter

677 at the request of the division; or

678 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under  
679 Subsection 78A-6-106(4).

680 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)  
681 through (e), the division shall issue a notice that contains all of the following:

682 (a) the name and address of the person to whom the notice is directed;

683 (b) the date, time, and place of the shelter hearing;

684 (c) the name of the child on whose behalf a petition is being brought;

685 (d) a concise statement regarding:

686 (i) the reasons for removal or other action of the division under Subsection (1); and

687 (ii) the allegations and code sections under which the proceeding has been instituted;

688 (e) a statement that the parent or guardian to whom notice is given, and the child, are  
689 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is  
690 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be  
691 provided in accordance with the provisions of Section 78A-6-1111; and

692 (f) a statement that the parent or guardian is liable for the cost of support of the child in  
693 the protective custody, temporary custody, and custody of the division, and the cost for legal  
694 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial  
695 ability of the parent or guardian.

696 (3) The notice described in Subsection (2) shall be personally served as soon as  
697 possible, but no later than one business day after removal of the child from the child's home, or  
698 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection  
699 78A-6-106(4), on:

700 (a) the appropriate guardian ad litem; and

701 (b) both parents and any guardian of the child, unless the parents or guardians cannot  
702 be located.

703 (4) The following persons shall be present at the shelter hearing:

704 (a) the child, unless it would be detrimental for the child;

705 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or  
706 fail to appear in response to the notice;

707 (c) counsel for the parents, if one is requested;

- 708 (d) the child's guardian ad litem;
- 709 (e) the caseworker from the division who is assigned to the case; and
- 710 (f) the attorney from the attorney general's office who is representing the division.
- 711 (5) (a) At the shelter hearing, the court shall:
- 712 (i) provide an opportunity to provide relevant testimony to:
- 713 (A) the child's parent or guardian, if present; and
- 714 (B) any other person having relevant knowledge; and
- 715 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.
- 716 (b) The court:
- 717 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
- 718 Procedure;
- 719 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
- 720 the requesting party, or their counsel; and
- 721 (iii) may in its discretion limit testimony and evidence to only that which goes to the
- 722 issues of removal and the child's need for continued protection.
- 723 (6) If the child is in the protective custody of the division, the division shall report to
- 724 the court:
- 725 (a) the reason why the child was removed from the parent's or guardian's custody;
- 726 (b) any services provided to the child and the child's family in an effort to prevent
- 727 removal;
- 728 (c) the need, if any, for continued shelter;
- 729 (d) the available services that could facilitate the return of the child to the custody of
- 730 the child's parent or guardian; and
- 731 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the
- 732 child or friends of the child's parents may be able and willing to accept temporary placement of
- 733 the child.
- 734 (7) The court shall consider all relevant evidence provided by persons or entities
- 735 authorized to present relevant evidence pursuant to this section.
- 736 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
- 737 cause shown, the court may grant no more than one continuance, not to exceed five judicial
- 738 days.



739 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for  
740 a continuance under Subsection (8)(a).

741 (9) (a) If the child is in the protective custody of the division, the court shall order that  
742 the child be released from the protective custody of the division unless it finds, by a  
743 preponderance of the evidence, that any one of the following exist:

744 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or  
745 safety of the child and the child's physical health or safety may not be protected without  
746 removing the child from the custody of the child's parent;

747 (ii) (A) the child is suffering emotional damage; and

748 (B) there are no reasonable means available by which the child's emotional health may  
749 be protected without removing the child from the custody of the child's parent;

750 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is  
751 not removed from the custody of the child's parents;

752 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same  
753 household has been, or is considered to be at substantial risk of being, physically abused,  
754 sexually abused, or sexually exploited by a:

755 (A) parent;

756 (B) member of the parent's household; or

757 (C) person known to the parent;

758 (v) the parent is unwilling to have physical custody of the child;

759 (vi) the child is without any provision for the child's support;

760 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe  
761 and appropriate care for the child;

762 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is  
763 unwilling or unable to provide care or support for the child;

764 (B) the whereabouts of the parent are unknown; and

765 (C) reasonable efforts to locate the parent are unsuccessful;

766 (ix) the child is in urgent need of medical care;

767 (x) the physical environment or the fact that the child is left unattended beyond a  
768 reasonable period of time poses a threat to the child's health or safety;

769 (xi) the child or a minor residing in the same household has been neglected;

770 (xii) the parent, or an adult residing in the same household as the parent, is charged or  
771 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine  
772 laboratory operation was located in the residence or on the property where the child resided; or

773 (xiii) the child's welfare is substantially endangered.

774 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is  
775 established if:

776 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency  
777 involving the parent; and

778 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

779 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly  
780 allowed the child to be in the physical care of a person after the parent received actual notice  
781 that the person physically abused, sexually abused, or sexually exploited the child, that fact  
782 constitutes prima facie evidence that there is a substantial risk that the child will be physically  
783 abused, sexually abused, or sexually exploited.

784 (10) (a) (i) The court shall also make a determination on the record as to whether  
785 reasonable efforts were made to prevent or eliminate the need for removal of the child from the  
786 child's home and whether there are available services that would prevent the need for continued  
787 removal.

788 (ii) If the court finds that the child can be safely returned to the custody of the child's  
789 parent or guardian through the provision of those services, the court shall place the child with  
790 the child's parent or guardian and order that those services be provided by the division.

791 (b) In making the determination described in Subsection (10)(a), and in ordering and  
792 providing services, the child's health, safety, and welfare shall be the paramount concern, in  
793 accordance with federal law.

794 (11) Where the division's first contact with the family occurred during an emergency  
795 situation in which the child could not safely remain at home, the court shall make a finding that  
796 any lack of preplacement preventive efforts was appropriate.

797 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe  
798 abuse, or severe neglect are involved, neither the division nor the court has any duty to make  
799 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,  
800 return a child to the child's home, provide reunification services, or attempt to rehabilitate the

801 offending parent or parents.

802 (13) The court may not order continued removal of a child solely on the basis of  
803 educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply  
804 with a court order to attend school.

805 (14) (a) Whenever a court orders continued removal of a child under this section, the  
806 court shall state the facts on which that decision is based.

807 (b) If no continued removal is ordered and the child is returned home, the court shall  
808 state the facts on which that decision is based.

809 (15) If the court finds that continued removal and temporary custody are necessary for  
810 the protection of a child because harm may result to the child if the child were returned home,  
811 the court shall order continued removal regardless of:

812 (a) any error in the initial removal of the child;

813 (b) the failure of a party to comply with notice provisions; or

814 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child  
815 and Family Services.

816 Section 10. Section **78A-6-308** is amended to read:

817 **78A-6-308. Criminal background checks necessary prior to out-of-home**  
818 **placement.**

819 (1) Subject to Subsection (3), upon ordering removal of a child from the custody of the  
820 child's parent and placing that child in the custody of the Division of Child and Family  
821 Services, prior to the division's placement of that child in out-of-home care, the court shall  
822 require the completion of a nonfingerprint-based background check by the Utah Bureau of  
823 Criminal Identification regarding the proposed placement.

824 (2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad  
825 Litem may request, or the court upon the court's own motion may order, the Department of  
826 Public Safety to conduct a complete Federal Bureau of Investigation criminal background  
827 check through the national criminal history system (NCIC).

828 (b) Except as provided in Subsection (4), upon request by the division or the Office of  
829 Guardian ad Litem, or upon the court's order, persons subject to the requirements of Subsection  
830 (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The  
831 child may be temporarily placed, pending the outcome of that background check.

832 (c) The cost of those investigations shall be borne by whoever is to receive placement  
833 of the child, except that the Division of Child and Family Services may pay all or part of the  
834 cost of those investigations.

835 (3) Except as provided in Subsection (5), a child who is in the legal custody of the state  
836 may not be placed with a prospective foster parent or a prospective adoptive parent, unless,  
837 before the child is placed with the prospective foster parent or the prospective adoptive parent:

838 (a) a fingerprint based FBI national criminal history records check is conducted on the  
839 prospective foster parent or prospective adoptive parent and any other adult residing in the  
840 household;

841 (b) the Department of Human Services conducts a check of the abuse and neglect  
842 registry in each state where the prospective foster parent or prospective adoptive parent resided  
843 in the five years immediately preceding the day on which the prospective foster parent or  
844 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine  
845 whether the prospective foster parent or prospective adoptive parent is listed in the registry as  
846 having a substantiated or supported finding of a severe type of abuse or neglect as defined in  
847 Section 62A-4a-1002;

848 (c) the Department of Human Services conducts a check of the abuse and neglect  
849 registry of each state where each adult living in the home of the prospective foster parent or  
850 prospective adoptive parent described in Subsection (3)(b) resided in the five years  
851 immediately preceding the day on which the prospective foster parent or prospective adoptive  
852 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed  
853 in the registry as having a substantiated or supported finding of a severe type of abuse or  
854 neglect as defined in Section 62A-4a-1002; and

855 (d) each person required to undergo a background check described in this Subsection  
856 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

857 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial  
858 parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court  
859 finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the  
860 child.

861 (5) The requirements under Subsection (3) do not apply to the extent that:

862 (a) federal law or rule permits otherwise; or

863 (b) the requirements would prohibit the division or a court from placing a child with:  
864 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or  
865 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending  
866 completion of the background check described in Subsection (3).

867 Section 11. Section **78A-6-312** is amended to read:

868 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

869 (1) The court may:

870 (a) make any of the dispositions described in Section 78A-6-117;

871 (b) place the minor in the custody or guardianship of any:

872 (i) individual; or

873 (ii) public or private entity or agency; or

874 (c) order:

875 (i) protective supervision;

876 (ii) family preservation;

877 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

878 (iv) other services.

879 (2) Whenever the court orders continued removal at the dispositional hearing, and that  
880 the minor remain in the custody of the division, the court shall first:

881 (a) establish a primary permanency goal for the minor; and

882 (b) determine whether, in view of the primary permanency goal, reunification services  
883 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

884 (3) Subject to Subsections (6) and (7), if the court determines that reunification  
885 services are appropriate for the minor and the minor's family, the court shall provide for  
886 reasonable parent-time with the parent or parents from whose custody the minor was removed,  
887 unless parent-time is not in the best interest of the minor.

888 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe  
889 abuse, or severe neglect are involved, neither the division nor the court has any duty to make  
890 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to  
891 attempt to rehabilitate the offending parent or parents.

892 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount  
893 concern in determining whether reasonable efforts to reunify should be made.

894 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless  
895 the court makes a finding that it is necessary to deny parent-time in order to:

- 896 (a) protect the physical safety of the minor;
- 897 (b) protect the life of the minor; or
- 898 (c) prevent the minor from being traumatized by contact with the parent due to the  
899 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

900 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a  
901 parent's failure to:

- 902 (a) prove that the parent has not used legal or illegal substances; or
- 903 (b) comply with an aspect of the child and family plan that is ordered by the court.

904 (8) In addition to the primary permanency goal, the court shall establish a concurrent  
905 permanency goal that shall include:

- 906 (a) a representative list of the conditions under which the primary permanency goal  
907 will be abandoned in favor of the concurrent permanency goal; and
- 908 (b) an explanation of the effect of abandoning or modifying the primary permanency  
909 goal.

910 (9) A permanency hearing shall be conducted in accordance with Subsection  
911 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if  
912 something other than reunification is initially established as a minor's primary permanency  
913 goal.

914 (10) (a) The court may amend a minor's primary permanency goal before the  
915 establishment of a final permanency plan under Section 78A-6-314.

916 (b) The court is not limited to the terms of the concurrent permanency goal in the event  
917 that the primary permanency goal is abandoned.

918 (c) If, at any time, the court determines that reunification is no longer a minor's primary  
919 permanency goal, the court shall conduct a permanency hearing in accordance with Section  
920 78A-6-314 on or before the earlier of:

- 921 (i) 30 days after the day on which the court makes the determination described in this  
922 Subsection (10)(c); or
- 923 (ii) the day on which the provision of reunification services, described in Section  
924 78A-6-314, ends.

925 (11) (a) If the court determines that reunification services are appropriate, it shall order  
926 that the division make reasonable efforts to provide services to the minor and the minor's  
927 parent for the purpose of facilitating reunification of the family, for a specified period of time.

928 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,  
929 and welfare shall be the division's paramount concern, and the court shall so order.

930 (12) The court shall:

931 (a) determine whether the services offered or provided by the division under the child  
932 and family plan constitute "reasonable efforts" on the part of the division;

933 (b) determine and define the responsibilities of the parent under the child and family  
934 plan in accordance with Subsection 62A-4a-205(6)(e); and

935 (c) identify verbally on the record, or in a written document provided to the parties, the  
936 responsibilities described in Subsection (12)(b), for the purpose of assisting in any future  
937 determination regarding the provision of reasonable efforts, in accordance with state and  
938 federal law.

939 (13) (a) The time period for reunification services may not exceed 12 months from the  
940 date that the minor was initially removed from the minor's home, unless the time period is  
941 extended under Subsection 78A-6-314(8).

942 (b) Nothing in this section may be construed to entitle any parent to an entire 12  
943 months of reunification services.

944 (14) (a) If reunification services are ordered, the court may terminate those services at  
945 any time.

946 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined  
947 to be inconsistent with the final permanency plan for the minor established pursuant to Section  
948 78A-6-314, then measures shall be taken, in a timely manner, to:

949 (i) place the minor in accordance with the permanency plan; and

950 (ii) complete whatever steps are necessary to finalize the permanent placement of the  
951 minor.

952 (15) Any physical custody of the minor by the parent or a relative during the period  
953 described in Subsections (11) through (14) does not interrupt the running of the period.

954 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted  
955 by the court in accordance with Section 78A-6-314 at the expiration of the time period for

956 reunification services.

957 (b) The permanency hearing shall be held no later than 12 months after the original  
958 removal of the minor.

959 (c) If reunification services are not ordered, a permanency hearing shall be conducted  
960 within 30 days, in accordance with Section 78A-6-314.

961 (17) With regard to a minor who is 36 months of age or younger at the time the minor  
962 is initially removed from the home, the court shall:

963 (a) hold a permanency hearing eight months after the date of the initial removal,  
964 pursuant to Section 78A-6-314; and

965 (b) order the discontinuance of those services after eight months from the initial  
966 removal of the minor from the home if the parent or parents have not made substantial efforts  
967 to comply with the child and family plan.

968 (18) With regard to a minor in the custody of the division whose parent or parents are  
969 ordered to receive reunification services but who have abandoned that minor for a period of six  
970 months from the date that reunification services were ordered:

971 (a) the court shall terminate reunification services; and

972 (b) the division shall petition the court for termination of parental rights.

973 (19) When a court conducts a permanency hearing for a minor under Section  
974 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the  
975 sibling group together is:

976 (a) practicable; and

977 (b) in accordance with the best interest of the minor.

978 (20) (a) Because of the state's interest in and responsibility to protect and provide  
979 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a  
980 parent's interest in receiving reunification services is limited.

981 (b) The court may determine that:

982 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,  
983 based on the individual circumstances; and

984 (ii) reunification services should not be provided.

985 (c) In determining "reasonable efforts" to be made with respect to a minor, and in  
986 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount



987 concern.

988 (21) There is a presumption that reunification services should not be provided to a  
989 parent if the court finds, by clear and convincing evidence, that any of the following  
990 circumstances exist:

991 (a) the whereabouts of the parents are unknown, based upon a verified affidavit  
992 indicating that a reasonably diligent search has failed to locate the parent;

993 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such  
994 magnitude that it renders the parent incapable of utilizing reunification services;

995 (c) the minor was previously adjudicated as an abused child due to physical abuse,  
996 sexual abuse, or sexual exploitation, and following the adjudication the minor:

997 (i) was removed from the custody of the minor's parent;

998 (ii) was subsequently returned to the custody of the parent; and

999 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual  
1000 exploitation;

1001 (d) the parent:

1002 (i) caused the death of another minor through abuse or neglect; [or]

1003 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

1004 (A) murder or manslaughter of a child; or

1005 (B) child abuse homicide;

1006 (iii) committed sexual abuse against the child; or

1007 (iv) is a registered sex offender or required to register as a sex offender;

1008 (e) the minor suffered severe abuse by the parent or by any person known by the  
1009 parent, if the parent knew or reasonably should have known that the person was abusing the  
1010 minor;

1011 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,  
1012 and the court finds that it would not benefit the minor to pursue reunification services with the  
1013 offending parent;

1014 (g) the parent's rights are terminated with regard to any other minor;

1015 (h) the minor is removed from the minor's home on at least two previous occasions and  
1016 reunification services were offered or provided to the family at those times;

1017 (i) the parent has abandoned the minor for a period of six months or longer;

1018 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a  
1019 location where the parent knew or should have known that a clandestine laboratory operation  
1020 was located;

1021 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's  
1022 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was  
1023 exposed to an illegal or prescription drug that was abused by the child's mother while the child  
1024 was in utero, if the child was taken into division custody for that reason, unless the mother  
1025 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a  
1026 substance abuse treatment program approved by the department; or

1027 (l) any other circumstance that the court determines should preclude reunification  
1028 efforts or services.

1029 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence  
1030 from at least two medical or mental health professionals, who are not associates, establishing  
1031 that, even with the provision of services, the parent is not likely to be capable of adequately  
1032 caring for the minor within 12 months after the day on which the court finding is made.

1033 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under  
1034 the circumstances of the case, that the substance abuse treatment described in Subsection  
1035 (21)(k) is not warranted.

1036 (23) In determining whether reunification services are appropriate, the court shall take  
1037 into consideration:

1038 (a) failure of the parent to respond to previous services or comply with a previous child  
1039 and family plan;

1040 (b) the fact that the minor was abused while the parent was under the influence of  
1041 drugs or alcohol;

1042 (c) any history of violent behavior directed at the child or an immediate family  
1043 member;

1044 (d) whether a parent continues to live with an individual who abused the minor;

1045 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

1046 (f) testimony by a competent professional that the parent's behavior is unlikely to be  
1047 successful; and

1048 (g) whether the parent has expressed an interest in reunification with the minor.

1049 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through  
1050 (22), and the whereabouts of a parent become known within six months after the day on which  
1051 the out-of-home placement of the minor is made, the court may order the division to provide  
1052 reunification services.

1053 (b) The time limits described in Subsections (2) through (19) are not tolled by the  
1054 parent's absence.

1055 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable  
1056 services unless it determines that those services would be detrimental to the minor.

1057 (b) In making the determination described in Subsection (25)(a), the court shall  
1058 consider:

1059 (i) the age of the minor;

1060 (ii) the degree of parent-child bonding;

1061 (iii) the length of the sentence;

1062 (iv) the nature of the treatment;

1063 (v) the nature of the crime or illness;

1064 (vi) the degree of detriment to the minor if services are not offered;

1065 (vii) for a minor 10 years of age or older, the minor's attitude toward the  
1066 implementation of family reunification services; and

1067 (viii) any other appropriate factors.

1068 (c) Reunification services for an incarcerated parent are subject to the time limitations  
1069 imposed in Subsections (2) through (19).

1070 (d) Reunification services for an institutionalized parent are subject to the time  
1071 limitations imposed in Subsections (2) through (19), unless the court determines that continued  
1072 reunification services would be in the minor's best interest.

1073 (26) If, pursuant to Subsections (21)(b) through (1), the court does not order  
1074 reunification services, a permanency hearing shall be conducted within 30 days, in accordance  
1075 with Section 78A-6-314.

1076 Section 12. Section **78A-6-511** is amended to read:

1077 **78A-6-511. Court disposition of child upon termination.**

1078 (1) As used in this section, "relative" means:

1079 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great

1080 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;  
1081 and

1082 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25  
1083 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that  
1084 statute.

1085 ~~[(+)]~~ (2) Upon entry of an order under this part the court may:

1086 (a) place the child in the legal custody and guardianship of a licensed child placement  
1087 agency or the division for adoption; or

1088 (b) make any other disposition of the child authorized under Section 78A-6-117.

1089 ~~[(2) AH]~~ (3) Subject to the requirements of Subsections (4) through (7), all adoptable  
1090 children shall be placed for adoption.

1091 (4) If the parental rights of all parents of an adoptable child have been terminated, the  
1092 court:

1093 (a) shall determine whether there is a relative who desires to adopt the child; and

1094 (b) may order the division to conduct a reasonable search to determine whether there  
1095 are relatives who are willing to adopt the child.

1096 (5) A relative of an adoptable child shall receive preference in adoption placement,  
1097 unless the placement is not in the best interest of the child. If a relative desires to adopt the  
1098 child, the court shall:

1099 (a) make a specific finding regarding the fitness of the relative to adopt the child; and

1100 (b) place the child for adoption with that relative unless it finds that adoption by the  
1101 relative is not in the best interest of the child.

1102 (6) This section does not guarantee that a relative will be permitted to adopt the child.

1103 (7) If the court does not place the child with a relative, the court shall make a specific  
1104 finding, on the record, explaining why the relative was not a suitable adoptive parent.

1105 (8) If no suitable relative is found to adopt the child, the court shall consider the child's  
1106 foster parents, in accordance with Section 78B-6-132, or any other adult in accordance with  
1107 Section 78B-6-117.

1108 Section 13. Section **78A-6-902** is amended to read:

1109 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**  
1110 **responsibilities -- Training -- Trained staff and court-appointed special advocate**

1111 **volunteers -- Costs -- Immunity -- Annual report.**

1112 (1) (a) The court:

1113 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor  
1114 involved in any case before the court; and1115 (ii) shall consider the best interest of a minor, consistent with the provisions of Section  
1116 62A-4a-201, in determining whether to appoint a guardian ad litem.1117 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a  
1118 finding that establishes the necessity of the appointment.1119 (2) An attorney guardian ad litem shall represent the best interest of each child who  
1120 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of  
1121 the day that:

1122 (a) the child is removed from the child's home by the division; or

1123 (b) the petition is filed.

1124 (3) The director shall ensure that each attorney guardian ad litem employed by the  
1125 office:

1126 (a) represents the best interest of each client of the office in all venues, including:

1127 (i) court proceedings; and

1128 (ii) meetings to develop, review, or modify the child and family plan with the Division  
1129 of Child and Family Services in accordance with Section 62A-4a-205;

1130 (b) prior to representing any minor before the court, be trained in:

1131 (i) applicable statutory, regulatory, and case law; and

1132 (ii) nationally recognized standards for an attorney guardian ad litem;

1133 (c) conducts or supervises an ongoing, independent investigation in order to obtain,  
1134 first-hand, a clear understanding of the situation and needs of the minor;

1135 (d) (i) personally meets with the minor, unless:

1136 (A) the minor is outside of the state; or

1137 (B) meeting with the minor would be detrimental to the minor;

1138 (ii) personally interviews the minor, unless:

1139 (A) the minor is not old enough to communicate;

1140 (B) the minor lacks the capacity to participate in a meaningful interview; or

1141 (C) the interview would be detrimental to the minor; and

1142 (iii) if the minor is placed in an out-of-home placement, or is being considered for  
1143 placement in an out-of-home placement, unless it would be detrimental to the minor:  
1144 (A) to the extent possible, determines the minor's goals and concerns regarding  
1145 placement; and  
1146 (B) personally assesses or supervises an assessment of the appropriateness and safety  
1147 of the minor's environment in each placement;  
1148 (e) personally attends all review hearings pertaining to the minor's case;  
1149 (f) participates in all appeals, unless excused by order of the court;  
1150 (g) is familiar with local experts who can provide consultation and testimony regarding  
1151 the reasonableness and appropriateness of efforts made by the Division of Child and Family  
1152 Services to:  
1153 (i) maintain a minor in the minor's home; or  
1154 (ii) reunify a child with the child's parent;  
1155 (h) to the extent possible, and unless it would be detrimental to the minor, personally  
1156 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:  
1157 (i) the status of the minor's case;  
1158 (ii) all court and administrative proceedings;  
1159 (iii) discussions with, and proposals made by, other parties;  
1160 (iv) court action; and  
1161 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be  
1162 provided to the minor; and  
1163 (i) in cases where a child and family plan is required, personally or through a trained  
1164 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and  
1165 family plan and any dispositional orders to:  
1166 (i) determine whether services ordered by the court:  
1167 (A) are actually provided; and  
1168 (B) are provided in a timely manner; and  
1169 (ii) attempt to assess whether services ordered by the court are accomplishing the  
1170 intended goal of the services.  
1171 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use  
1172 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers

1173 Act, trained paralegals, and other trained staff to assist in investigation and preparation of  
1174 information regarding the cases of individual minors before the court.

1175 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained  
1176 in and follow, at a minimum, the guidelines established by the United States Department of  
1177 Justice Court Appointed Special Advocate Association.

1178 (5) The attorney guardian ad litem shall continue to represent the best interest of the  
1179 minor until released from that duty by the court.

1180 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

1181 (i) all costs resulting from the appointment of an attorney guardian ad litem; and  
1182 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

1183 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem  
1184 program to cover the costs described in Subsection (6)(a).

1185 (c) (i) When the court appoints an attorney guardian ad litem under this section, the  
1186 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer  
1187 expenses against the child's parents, parent, or legal guardian in a proportion that the court  
1188 determines to be just and appropriate[-], taking into consideration costs already borne by the  
1189 parents, parent, or legal guardian, including:

1190 (A) private attorney fees;

1191 (B) counseling for the child;

1192 (C) counseling for the parent, if mandated by the court or recommended by the

1193 Division of Child and Family Services; and

1194 (D) any other cost the court determines to be relevant.

1195 (ii) The court may not assess those fees or costs against:

1196 (A) a legal guardian, when that guardian is the state; or

1197 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

1198 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the  
1199 court shall:

1200 (i) require that person to submit an affidavit of impecuniosity as provided in Section  
1201 78A-2-302; and

1202 (ii) follow the procedures and make the determinations as provided in Section  
1203 78A-2-304.

1204 (e) The child's parents, parent, or legal guardian may appeal the court's determination,  
1205 under Subsection (6)(c), of fees, costs, and expenses.

1206 (7) An attorney guardian ad litem appointed under this section, when serving in the  
1207 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee  
1208 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental  
1209 Immunity Act of Utah.

1210 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

1211 (b) If the minor's wishes differ from the attorney's determination of the minor's best  
1212 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in  
1213 addition to presenting the attorney's determination of the minor's best interest.

1214 (c) A difference between the minor's wishes and the attorney's determination of best  
1215 interest may not be considered a conflict of interest for the attorney.

1216 (d) the guardian ad litem shall disclose the wishes of the child unless the child:

1217 (i) instructs the guardian ad litem to not disclose the child's wishes; or

1218 (ii) has not expressed any wishes.

1219 [~~(d)~~] (e) The court may appoint one attorney guardian ad litem to represent the best  
1220 interests of more than one child of a marriage.

1221 (9) An attorney guardian ad litem shall be provided access to all Division of Child and  
1222 Family Services records regarding the minor at issue and the minor's family.

1223 (10) (a) An attorney guardian ad litem shall conduct an independent investigation  
1224 regarding the minor at issue, the minor's family, and what constitutes the best interest of the  
1225 minor.

1226 (b) An attorney guardian ad litem may interview the minor's Division of Child and  
1227 Family Services caseworker, but may not:

1228 (i) rely exclusively on the conclusions and findings of the Division of Child and Family  
1229 Services; or

1230 (ii) conduct a visit with the client in conjunction with the visit of a Division of Child  
1231 and Family Services caseworker.

1232 [~~(10)~~] (11) (a) An attorney guardian ad litem shall maintain current and accurate  
1233 records regarding:

1234 [~~(a)~~] (i) the number of times the attorney has had contact with each minor; and



1235           ~~[(b)]~~ (ii) the actions the attorney has taken in representation of the minor's best interest.

1236           (b) In every hearing where the guardian ad litem makes a recommendation regarding  
1237 the best interest of the child, the court shall require the guardian ad litem to disclose the factors  
1238 that form the basis of the recommendation.

1239           ~~[(H)]~~ (12) (a) Except as provided in ~~[Subsection (H)(b)]~~ Subsections (11) and (12)(b),  
1240 all records of an attorney guardian ad litem are confidential and may not be released or made  
1241 public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection  
1242 supersedes Title 63G, Chapter 2, Government Records Access and Management Act.

1243           (b) Consistent with Subsection ~~[(H)]~~ (12)(d), all records of an attorney guardian ad  
1244 litem:

1245           (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative  
1246 Subpoena Powers; and

1247           (ii) shall be released to the Legislature.

1248           (c) (i) Except as provided in Subsection ~~[(H)]~~ (12)(c)(ii), records released in  
1249 accordance with Subsection ~~[(H)]~~ (12)(b) shall be maintained as confidential by the  
1250 Legislature.

1251           (ii) Notwithstanding Subsection ~~[(H)]~~ (12)(c)(i), the Office of the Legislative Auditor  
1252 General may include summary data and nonidentifying information in its audits and reports to  
1253 the Legislature.

1254           (d) (i) Subsection ~~[(H)]~~ (12)(b) constitutes an exception to Rules of Professional  
1255 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

1256           (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

1257           (B) the state's role and responsibility:

1258           (I) to provide a guardian ad litem program; and

1259           (II) as parens patriae, to protect minors.

1260           (ii) A claim of attorney-client privilege does not bar access to the records of an attorney  
1261 guardian ad litem by the Legislature, through legislative subpoena.

1262           Section 14. Section **78B-6-131** is amended to read:

1263           **78B-6-131. Child in custody of state -- Placement.**

1264           (1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in  
1265 Subsection (2), a child who is in the legal custody of the state may not be placed with a

1266 prospective foster parent or a prospective adoptive parent, unless, before the child is placed  
1267 with the prospective foster parent or the prospective adoptive parent:

1268 (a) a fingerprint based FBI national criminal history records check is conducted on the  
1269 prospective foster parent [or], prospective adoptive parent, and any other adult residing in the  
1270 household;

1271 (b) the Department of Human Services conducts a check of the child abuse and neglect  
1272 registry in each state where the prospective foster parent or prospective adoptive parent resided  
1273 in the five years immediately preceding the day on which the prospective foster parent or  
1274 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine  
1275 whether the prospective foster parent or prospective adoptive parent is listed in the registry as  
1276 having a substantiated or supported finding of child abuse or neglect;

1277 (c) the Department of Human Services conducts a check of the child abuse and neglect  
1278 registry of each state where each adult living in the home of the prospective foster parent or  
1279 prospective adoptive parent described in Subsection (1)(b) resided in the five years  
1280 immediately preceding the day on which the prospective foster parent or prospective adoptive  
1281 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed  
1282 in the registry as having a substantiated or supported finding of child abuse or neglect; and

1283 (d) each person required to undergo a background check described in this section  
1284 passes the background check, pursuant to the provisions of Section 62A-2-120.

1285 (2) The requirements under Subsection (1) do not apply to the extent that:

1286 (a) federal law or rule permits otherwise; or

1287 (b) the requirements would prohibit the division or a court from placing a child with:

1288 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1289 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

1290 completion of the background check described in Subsection (1).